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January 17, 2006

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 22054

Re: MB Docket No. 05-317
WTVH License, Inc., WTVH-DT, Syracuse, NY (Facility ID 74151)
RESPONSE TO OPPOSITION OF ECHOSTAR SATELLITE L.L.C.
TELEVISION STATION SECTION 339(A)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

WTVH License, Inc. ("**WTVH License**"), licensee of television station WTVH(TV) and permittee of WTVH-DT, Syracuse, New York, Facility ID No. 74151 ("**WTVH**"), by its attorneys, hereby submits this reply ("**Reply**") to the opposition ("**Opposition**") of EchoStar Satellite L.L.C. ("**EchoStar**") to WTVH License's request for a six-month waiver ("**Testing Waiver**") of the April 30, 2006 digital signal testing implementation date ("**Implementation Deadline**").¹ The Opposition asserts that WTVH License has not provided any evidence that its inability to obtain international coordination for its pending DTV minor modification application is or has been unremediable.² As explained herein, the Media Bureau ("**Bureau**") should reject EchoStar's position because WTVH License has adequately demonstrated that grant of a Testing Waiver is consistent with Section 339(a)(2)(D) of the Communications Act ("**Section 339**").

¹ The instant Reply is filed pursuant to the November 17, 2005 public notice ("**Waiver PN**") released by the Federal Communications Commission ("**FCC**" or "**Commission**") See TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be Filed by November 30, 2005 or February 15, 2007, DA 05-2979, *Public Notice* (rel. Nov. 17, 2005). The Waiver PN provides that responses to oppositions to requests for waivers of digital testing must be filed on or before January 16, 2006. However, the Commission's offices are not open for business on January 16, 2006 because January 16, 2006 is Martin Luther King, Jr. Day, a federal holiday. It is the FCC's general policy that, if a filing deadline falls on a federal holiday, the document is not required to be filed until the next business day.

² See Opposition at 12-13.

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WTVH License's Need for International Coordination Is Unremediable. Section 339 provides that network stations subject to the Implementation Deadline may obtain a temporary waiver of satellite subscriber digital signal testing if "the station's digital signal coverage is limited due to the unremediable presence of one or more" statutory criteria, including "the need for international coordination or approvals."³ WTVH License explained in its request for a Testing Waiver that it is unable to complete construction of its full-power DTV facilities because the FCC has not yet acted on a pending DTV minor modification application filed by WTVH License on August 10, 2004 seeking FCC consent to modify its facilities to relocate its transmitter site and reduce power ("**Minor Mod Application**"), due to a pending request to the Canadian government for international coordination of such application.⁴ In sum, WTVH-DT's digital signal coverage currently is limited due to "the need for international coordination" of the Minor Mod Application and thus WTVH License satisfies the statutory criterion for a waiver of the Implementation Date.

Indeed, the Opposition acknowledges that the "unavoidable delay caused by the need to obtain Canadian government approval would be a legitimate ground for waiver."⁵ Nevertheless, the Opposition asserts that WTVH License is somehow responsible for the unresolved international coordination issue because WTVH did not file the Minor Mod Application until August 10, 2004.⁶ As an initial matter, there is no requirement under Section 339 of the

³ 47 C.F.R. § 339(a)(2)(D)(viii).

⁴ See Letter to Ms. Marlene H. Dortch, Secretary, FCC, from Tom W. Davidson, Esq., MB Docket No. 05-317 (filed Nov. 30, 2005). The Opposition states that WTVH License did not file the Minor Modification Application until August 2005. As noted in the Commission's databases, the Minor Modification Application was filed in August 2004. See BMPCDT-20040810ABB, amended Nov. 29, 2004.

⁵ See Opposition at 13.

⁶ The Opposition asserts in several places that the pace of international coordination is determined by how actively a licensee pursues a pending application, although the Opposition did not make this specific assertion with respect to WTVH License. The international coordination process is administered by the Commission and the appropriate international regulatory authority, *e.g.* Industry Canada. Licensees have little or no opportunity to become involved in this process, other than to correspond with the FCC to determine the status of a pending application that is subject to an international coordination request. Indeed, in early November 2005, WTVH License communicated with the Commission to determine why the Minor Mod Application had not yet been granted. Although WTVH License will continue to follow up with FCC staff from time to time to inquire into the status of the Minor Mod Application, WTVH License's actions will likely have no bearing on the pace of the international coordination process, as the Opposition contends.

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Communications Act or the FCC's rules requiring television licensees to file modification applications to modify their digital coverage areas within any specific timeframe. Moreover, WTVH License filed the Minor Mod Application promptly after determining the most viable means to replicate fully its analog service area while simultaneously accommodating a Class A television station in a nearby market. Specifically, upon learning that operation from its proposed DTV transmitter site might cause interference to the Class A television station, in order to avoid such potential interference and expeditiously provide digital service to its viewers, WTVH License built low-power digital facilities pursuant to a special temporary authorization. Thereafter, WTVH License considered whether its permanent digital facilities could be built at a lower-than-authorized power and still replicate WTVH's analog service area. After conducting several studies, WTVH License concluded that the facilities for which it is seeking authorization in the Minor Mod Application would satisfy both the need to replicate fully its analog service area and the desire to accommodate the Class A television station. WTVH License then filed the Minor Mod Application, which remains pending due to an international coordination request.

Conclusion. For all of the reasons set forth herein, WTVH License respectfully requests that the Bureau deny the Opposition and grant a Testing Waiver for WTVH-DT.

Please direct any questions or inquiries regarding this matter to the undersigned.

Sincerely,

/s/

Tom W. Davidson, Esq.

cc: Nazifa Sawez, Esq.